

---

---

AGREEMENT AND ASSIGNMENT

Dated as of December 13, 1973

7280 - a

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

between

DEC 28 1973 -9 25 AM

INTERSTATE COMMERCE COMMISSION

WHITEHEAD & KALES COMPANY  
Manufacturer

and

NATIONAL COMMERCIAL BANK AND TRUST COMPANY  
Agent

---

---

AGREEMENT AND ASSIGNMENT dated as of December 13, 1973, between WHITEHEAD & KALES COMPANY, a Michigan corporation (hereinafter called the "Manufacturer") and NATIONAL COMMERCIAL BANK AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of December 13, 1973 (hereinafter called the "Finance Agreement") said Agent, so acting, being hereinafter called the "Assignee".

w i t n e s s e t h:

WHEREAS, the Manufacturer, FCB LEASING LTD, (hereinafter called the "Vendee") and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (hereinafter called the "Guarantor") have entered into a Conditional Sale Agreement dated as of December 13, 1973 (hereinafter called the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Vendee of the Equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the "Units");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this "Assignment"): That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each Unit;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Units and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 14 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Units and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this section, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

SECTION 2. The Manufacturer agrees that it shall construct the Units in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Unit under the Conditional Sale Agreement it had legal title to such Unit and good and lawful right to sell such Unit and that title to such Unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and that the Manufacturer further agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such Unit by the Manufacturer under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Guarantor thereunder. The Manufacturer will not deliver any of the Units to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act and in the appropriate office(s) pursuant

to Article 9 of the Uniform Commercial Code (the Manufacturer and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Guarantor that such filings and recordations have occurred.)

SECTION 3. The Manufacturer agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Units or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Guarantor arising out of a breach by the Manufacturer of any obligation with respect to the Units or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts

such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Units of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense to compromise, settle or defend against such claim. The Manufacturer agrees that any amounts payable to it by the Vendee or the Guarantor with respect to the Units, whether pursuant to the Conditional

Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Units or any Unit thereof.

SECTION 4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each Unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

The name of the Vendor followed by the words  
"Agent, Security Owner under a Conditional Sale  
Agreement to FCB LEASING LTD."

SECTION 5. The Assignee, on the Closing Dates fixed as provided in Article 3 of the Conditional Sale Agreement with respect to the Units, shall pay to the Manufacturer the Purchase Price specified therein, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days prior to the Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Manufacturer to the Assignee transferring to the Assignee title to the Units then being settled

for under the Conditional Sale Agreement, warranting to the Assignee and to the Vendee that, at the time of delivery of such Units under the Conditional Sale Agreement, the Manufacturer had legal title to such Units and good and lawful right to sell such Units and that title to such Units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, and covenanting to defend the title to such Units against the demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Manufacturer under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance and Delivery with respect to the Units as contemplated by Article 2 of the Conditional Sale Agreement and a Certificate or Certificates of Acceptance and Delivery with respect to such Units as contemplated by Section 1 of the Lease;

(c) A certificate of an officer of the Guarantor to the effect that none of the Units were placed in the service of the Guarantor or otherwise was used by the Guarantor prior to delivery and acceptance of such Units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Manufacturer addressed to the Assignee for the Units accompanied by or having endorsed thereon



a certification by the Vendee and the Guarantor as to the correctness of the prices of such Units;

(e) An opinion of special counsel for the Assignee and the Investor named in the Finance Agreement, dated as of the Closing Date, addressed to the Assignee and the Investor Stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units is validly vested in the Assignee and such Units at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Guarantor under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the

Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and the appropriate office(s) pursuant to Article 9 of the Uniform Commercial Code and no other filings or recordations are necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors (in rendering said opinion counsel may rely upon the warranties in the aforesaid bill of sale, opinions of counsel for Manufacturer, Guarantor, Lessor, and Lessee, and such other matters as counsel may deem reasonably necessary);

(f) Opinion of counsel for the Vendee dated as of the Closing Date, stating that the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered

by the Vendee and are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(g) An opinion of counsel for the Guarantor, dated as of the Closing Date and addressed to the Vendee as well as the Assignee, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (e) above and stating that the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(h) An opinion of counsel for the Manufacturer, dated as of the Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and is a legal and valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Manufacturer and is a legal and valid instrument binding upon the Manufacturer; and

(i) A receipt from the Manufacturer for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Dates to the Manufacturer with respect to the Units, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f) (g) and (h) of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e) and (f), counsel may rely (i) as to authorization, execution and delivery by the Manufacturer of the documents executed by the Manufacturer and title to the Units at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Manufacturer and (ii) to the extent appropriate, as to any matter governed by the law of any jurisdiction, on the opinion of counsel for the Manufacturer or the opinion of counsel for the Guarantor as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Units assigned hereunder is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the

Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall exist and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the Units with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 hereof.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in

Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Guarantor, the Conditional Sale Agreement is, insofar as the Manufacturer is concerned, a legal, valid and existing agreement binding upon the Manufacturer in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, title and interests hereby assigned and transferred to the Assignee or intended to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and Article 9 of the Uniform Commercial Code, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any Unit shall be located, and any rights arising out of the marking on the Units.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterparts delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of December 13, 1973 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

WHITEHEAD & KALES COMPANY

By C. E. Wieser  
VICE PRES. & TREAS.

ATTEST:

[Signature]  
VICE PRES. & SEC'Y.

NATIONAL COMMERCIAL BANK AND TRUST COMPANY

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_



STATE OF **MICHIGAN**

COUNTY OF **WAYNE**

On this 20th day of December, 1973, before me personally appeared C. E. Wieser, to me personally known, who being by me duly sworn, says that he is a Vice President of Whitehead & Kales Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ardis W. Hall  
Notary Public **Ardis W. Hall**

My Commission Expires:

ARDIS W. HALL  
Notary Public, Wayne County, Mich.  
My Commission Expires Sept. 6, 1977.

STATE OF

COUNTY OF

On this \_\_\_\_\_ day of December, 1973, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of National Commercial Bank and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed and sealed on behalf of said Bank by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

WHITEHEAD & KALES COMPANY

By \_\_\_\_\_

ATTEST:

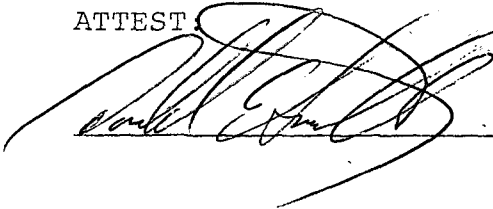
\_\_\_\_\_

NATIONAL COMMERCIAL BANK AND TRUST COMPANY

By \_\_\_\_\_

LY ..... TRUST OFFICER

ATTEST

  
\_\_\_\_\_

STATE OF

COUNTY OF

On this \_\_\_\_\_ day of December, 1973, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of Whitehead & Kales Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ) NEW YORK

)

COUNTY OF ) ALBANY

On this 21 st day of December, 1973, before me personally appeared T. R. Winnowski, to me personally known, who being by me duly sworn, says that he is a Trust Officer of National Commercial Bank and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed and sealed on behalf of said Bank by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

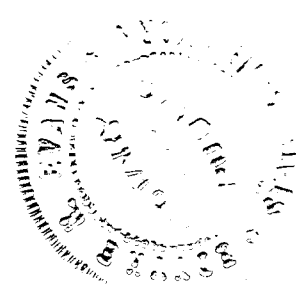
Edythe K. Evans  
Notary Public

**EDYTHER K. EVANS**

Notary Public, State of New York  
Residing in Albany County

My Commission Expires March 30, 1975

My Commission Expires:



ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 13, 1973.

FCB LEASING LTD.

BY \_\_\_\_\_

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

BY \_\_\_\_\_

AAA

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 13, 1973.

FCB LEASING LTD.

BY \_\_\_\_\_

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

BY   
Vice President - Finance & Accounting